

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: IOWA JOINT UTILITY MANAGEMENT PROGRAM, INC.	DOCKET NO. SPU-04-1
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**ORDER SCHEDULING CONFERENCE, DENYING MOTION TO DISMISS,
AND GRANTING INTERVENTION**

(Issued February 27, 2004)

On January 14, 2004, the Iowa Joint Utility Management Program, Inc. (IJUMP), filed a motion with the Utilities Board (Board) requesting approval of proposed small volume transportation tariffs for MidAmerican Energy Company (MidAmerican) and Interstate Power and Light Company (IPL). In the alternative, IJUMP requested that the Board order MidAmerican and IPL to file proposed tariff pages consistent with the proposed small volume transportation tariffs attached to the motion. On January 15, 2004, IJUMP made a substituted filing that included a complete copy of the proposed tariffs.

On January 22, 2004, the Board issued an order docketing the filing as an application, setting a date for interventions, and shortening the time for answers. In the order the Board stated that it would not approve tariffs for a utility filed by another party. The Board made MidAmerican Energy Company (MidAmerican) and Interstate

Power and Light Company (IPL) parties to this docket as Respondents pursuant to paragraph 199 IAC 7.2(7)"c."

On February 2, 2004, Cornerstone Energy, Inc. (Cornerstone), filed an application to intervene in this docket. Cornerstone holds a certificate as a competitive natural gas provider with authority to provide service to small volume customers. The Board will grant Cornerstone intervention in this proceeding.

Answers were filed by MidAmerican, IPL, and the Consumer Advocate Division of the Department of Justice (Consumer Advocate). IPL also filed a motion to dismiss. On February 6, 2004, IJUMP filed a response to MidAmerican's answer and a resistance to the motion to dismiss filed by IPL. On February 17, 2004, MidAmerican filed a reply to IJUMP's response.

The positions of the parties and the Board's decision on the motion to dismiss are set out below.

Consumer Advocate

In its answer Consumer Advocate states that it is working with the parties to assure that the proposals made by IJUMP accomplish the following:

1. Assure no subsidies of new transportation customers by sales customers.
2. Assure no cost shifting from new transportation customers to sales customers; e.g., mid-heating season costs for which new transportation customers should be responsible shifted to sales customers through the PGA.

3. Assure all associated administrative costs are paid by current IJUMP and new transportation customers.
4. Assure no undue or unreasonable discrimination exists in the proposed tariffs.

IPL

In its answer IPL states that it has no knowledge, information, or belief to allow it to file a proper answer since the filing contains no allegations of any type. IPL states that it is left to speculate on the reasonableness of IJUMP's request. IPL raises several procedural objections to the filing and contends that there are unresolved factual issues that need to be explored to determine whether IPL should be required to file a tariff consistent with IJUMP's request.

IPL states that it is unclear what obligation IPL would retain to secure gas volumes and transmission capacity in order to be able to supply IJUMP customers in the event of supply failure or a customer's election to return to system gas. IPL is concerned about the effect the proposal would have on reserve margins under subrule 199 IAC 19.16(4). IPL also objects to the proposed administrative charge process.

In support of the motion to dismiss, IPL argues that the IJUMP filing should be considered a complaint against rates under Iowa Code § 476.3. IPL is concerned that treating the filing as an application may not protect IPL's rights to a hearing.

IPL also argues that the filings made by IJUMP are defective as a matter of law since they propose to create a new class of natural gas transportation customer whose sole distinguishing class "characteristic" is that it is composed of governmental/non-profit type organizations. IPL suggests that limiting a class as proposed amounts to unlawful discrimination under Iowa Code § 476.5.

Finally, IPL points out that the Board recently closed an inquiry into small volume gas transportation, In re: Small Volume Gas Transportation, Docket No. NOI-98-3, after a lengthy review of whether a comprehensive small volume transportation plan was reasonable. IPL points out that the Board closed the docket based upon the limited interest in such a program, the changes in the natural gas industry, and the Board's limited resources. IPL suggests that IJUMP is trying to circumvent the Board's decision in a manner that is likely to result in challenges by similarly-situated commercial customers. IPL is also concerned that the filing by IJUMP only applies to IPL and MidAmerican and not to all natural gas utilities.

MidAmerican

MidAmerican objects to the filing and states that IJUMP has provided no statutory support that allows a customer or third-party to file a proposed tariff for Board approval. MidAmerican contends that what IJUMP proposes represents a significant departure from the Board's recently-expressed policy concerning small volume gas transportation. Any change in this policy should not be made in an expedited manner.

MidAmerican objects to the Board considering the filing made by IJUMP as an application. MidAmerican argues that the Board does not have subject matter jurisdiction over the filing. MidAmerican suggests that the Board's enabling legislation does not authorize tariff filings by persons other than utilities.

MidAmerican proposes that the Board consider the filing in the context of a generic proceeding since the proposals are a matter of general regulatory policy.

MidAmerican contends the Board's order is legally defective because it does not provide the necessary jurisdictional foundation for a rate proceeding.

MidAmerican proposes that in the alternative the Board could consider the filing under the complaint procedures in Iowa Code § 476.3. MidAmerican states that any procedure should allow utilities more than seven days to respond to the issues raised by the filing. MidAmerican also suggests the Board could consider the filing a petition for rule making. MidAmerican then raises several objections to the filing:

1. MidAmerican objects that the filing only addresses MidAmerican and IPL, rather than all Iowa gas utilities.
2. The proposed tariffs would only apply to a select group of customers and would thus be unduly discriminatory and the proposal would make the program permanent, rather than a pilot project.
3. The proposed limitations on the number of participants and pool operators could unduly favor IJUMP and not allow other potential pool operators the opportunity to provide service.

4. The proposed tariffs protect monthly-metered transporters to the detriment of purchased gas adjustment sales customers.

5. The current program is considered a pilot program and the IJUMP proposal would make it permanent.

6. The proposed program would expand the total gas load to customers whose usage might not be heat-sensitive. MidAmerican's current forecasting system is only designed to manage heat-sensitive customers and opening the service to other customers creates the following problems:

a. MidAmerican's forecasting system is based upon actual usage history and actual weather. If a customer's usage history is not tied to weather, MidAmerican cannot accurately forecast the customer's usage.

b. MidAmerican's current pilot program for schools has a Swing Service Fee that is based on variances between actual weather and forecasted weather. Allowing non-heat-sensitive customers to participate in the program would introduce inaccuracies into the calculation, which would result in additional costs to customers.

c. Allowing non-heat-sensitive customers to participate in monthly-metered transportation increases the amount of swing variance for MidAmerican's load and could jeopardize MidAmerican's operational integrity.

In its reply to IJUMP's response, MidAmerican restated its position that the Board does not have jurisdiction under Iowa Code § 476.2 to permit a third-party to propose a tariff for a utility. MidAmerican argues that the Board only has authority to consider the proposed tariffs in a rule making, investigation, or complaint.

MidAmerican then argues that the Board determined that small volume transportation service should not be extended and IJUMP's proposal should be rejected.

IJUMP Resistance

In the resistance, IJUMP argues that the Board has jurisdiction over the rates and services of IPL and MidAmerican and thus has jurisdiction to address the issues raised in IJUMP's pleadings. IJUMP states that it is not requesting the Board engage in any unlawful activity. It is requesting the Board approve small volume gas transportation tariffs consistent with the provisions proposed by IJUMP.

Board Discussion

On July 18, 2003, the Board issued an order In re: Small Volume Gas Transportation, Docket No. NOI-98-3, that closed the Board's inquiry into the possible development of a comprehensive plan for the transportation of natural gas by small volume customers, including residential customers. The Board based its decision upon the dramatic changes in the natural gas industry, the apparent lack of interest by small volume customers in transportation service, and the significant implementation issues associated with a comprehensive plan.

The Board indicated that its limited resources would be better utilized on other projects that would likely provide more benefit to gas utilities and customers.

When it terminated the inquiry into small volume gas transportation, the Board left in place the pilot programs provided by MidAmerican, IPL, and Atmos Energy that established small volume transportation service for schools. Aquila did not have a pilot program. Service under these pilot programs is still being provided under tariffs approved by the Board. These programs allow Iowa school districts the opportunity to aggregate their load and transport gas. Many of the school districts that participate in the program meet the definition of small volume customers as defined in subrule 199 IAC 19.14(1). IJUMP was established to aggregate the transportation volumes of participating schools. In 2001 IJUMP became incorporated as a not-for-profit corporation and expanded its charter to include entities other than schools.

IJUMP has requested that the Board expand the pilot program to include governmental and not-for-profit entities and to make the tariffs permanent. The pleading was in the form of a motion that requested the Board order MidAmerican and IPL to implement the proposed tariffs attached to the motion. MidAmerican and IPL object to this pleading and suggest the Board does not have jurisdiction over the pleading, should treat the pleading as a complaint regarding their existing tariffs under Iowa Code § 476.3, or should address the issues in some other proceeding.

MidAmerican's and IPL's objections to the form of the pleading and to the procedure adopted by the Board to address the pleading raise form over substance. The Board's broad general statutory jurisdiction of utility services under Iowa Code § 476.2 provides the Board with the authority to consider proposals to extend services provided by utilities. The Board took jurisdiction of the matters raised by IJUMP under this general authority and the Board addressed the issue of a third-party proposing tariffs for a utility by stating that the Board would not approve such tariffs. On this basis, the Board will deny the motion to dismiss filed by IPL.

In the order issued on January 22, 2004, the Board docketed the IJUMP pleading as an application and set a date for answering and intervention. The Board considers this procedure to be a reasonable approach to resolution of the issues raised by IJUMP and the procedure provides MidAmerican and IPL with adequate procedural safeguards. The Board finds that adopting a complaint procedure or some other procedure might result in different timing of filings but would not result in a significantly different procedure for addressing the issues raised.

The Board shortened the time for answering the application based upon its understanding that IJUMP had been in contact with the utilities and was discussing whether any areas of dispute could be quickly resolved. If a resolution of issues had been forthcoming, the Board could have moved expeditiously to consider that resolution.

It appears from the answers that significant issues concerning the application have not been resolved. The Board must, therefore, then consider what procedures are required to resolve those issues. Allowing answers in a shortened time frame did not prejudice either utility and has allowed the Board to receive the utility's positions and to determine how to proceed in addressing the issues. It was never intended that this would be the only opportunity for the utilities to respond to any issues that were unresolved.

The Board is not precluded from considering the issues presented by IJUMP regarding expansion of the current pilot project to include other entities and making the pilot permanent by the Board's decision to close the previous inquiry into small volume gas transportation. When it closed that inquiry, the Board did not indicate that requests to transport by some segment of small volume customers would not be considered. The Board understood that there might be some small volume customers who seek to transport gas. Closing the inquiry indicated the Board was not going to mandate a comprehensive plan that would involve all small volume customers, including residential customers. The Board did not indicate it would not consider any proposal for small volume gas transportation.

One of the reasons for closing the inquiry was the lack of interest expressed by potentially-affected customers. Since closing the docket, the Board has received several inquiries regarding transportation for small commercial entities and governmental bodies. This interest was one of the reasons that the Board opened its

ongoing inquiry into risk management of utility bills, In re: Review of Bill Risk Management for Natural Gas Customers, Docket No. NOI-03-5.

The Board finds that MidAmerican's suggestion to consider IJUMP's proposals to expand small volume transportation service in a rule making proceeding is premature. Proposed rules may result from a decision in this docket or from a decision in Docket No. NOI-03-5. However, proposed rules should await the outcome of these proceedings. Changes to the rules concerning utility's reserve margins are being addressed by the Board in the inquiry into purchased gas adjustment rules, In re: Review Of Purchased Gas Adjustment Rules, Docket No. NOI-03-1. The Board will ensure the results of that docket are not inconsistent with any decision in this docket.

After consideration of the answers and other pleadings, the Board is still not convinced that a procedural schedule with prefiled testimony and a hearing are warranted for the issues raised by IJUMP. Therefore, the Board will schedule a conference between the parties with Board staff in attendance, to determine if the disputed issues can be resolved and, if they cannot, how best to proceed with this docket. The Board will provide a list of issues for consideration at the conference. Parties may also raise additional issues.

1. Could the pilot programs of MidAmerican and IPL be expanded to include other entities such as governmental bodies?

2. Would removing the limitation of the entities that could participate in the program, but retaining some limit on the number of customers and pool operators, alleviate or eliminate the issue of undue discrimination?

3. Is there a maximum number of small volume customers that could take service under small volume gas tariffs similar to those proposed before costs of providing the service would increase significantly?

4. Are there specific tariff revisions that could be made to existing tariffs that would extend the availability of the service to additional customers as part of the pilot program or as permanent tariffs?

5. Are the administrative fees under the current pilot program tariffs cost-based? If not, what would be a cost-based administrative fee for the current tariffs, and what would be the projected administrative fees for small volume gas service as proposed by IJUMP?

6. What fees or other costs must a pilot program customer pay under the pilot program to return to system gas? How were these fees and costs developed?

7. If small volume gas transportation service were limited to heat-sensitive customers with heat-sensitive demand, would this address the forecasting problems raised by MidAmerican?

IT IS THEREFORE ORDERED:

1. Cornerstone Energy, Inc., is granted intervention in this docket.
2. The motion to dismiss filed by Interstate Power and Light Company on January 30, 2004, is denied.
3. A conference is scheduled for 9 a.m. April 6, 2004, in the Board's conference rooms 3 and 4 located at 350 Maple Street, Des Moines, Iowa. Persons with disabilities who require assistive services or devices to observe or participate should contact the Utilities Board at (515) 281-5256 in advance of the scheduled date to request that appropriate arrangements be made.

UTILITIES BOARD

/s/ Diane Munns

/s/ Mark O. Lambert

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 27th day of February, 2004.